

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ANANA RAZUMNY ROBERTS,

Plaintiff,

v.

CAROLYN W. COLVIN,
COMMISSIONER, SOCIAL SECURITY
ADMINISTRATION,

Defendant.

6:15-cv-01460-CL
ORDER

MCSHANE, Judge:

Magistrate Judge Mark D. Clarke filed a Findings and Recommendation (ECF No. 18), and the matter is now before this court. *See* 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b). Plaintiff filed objections to the Findings and Recommendation. Accordingly, I have reviewed the file of this case *de novo*. *See* 28 U.S.C. § 636(b)(1)(c); *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). I find no error and conclude the report is correct.

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As in many social security cases, plaintiff's case depends largely on her own credibility. Here, the ALJ determined Roberts was not entirely credible. I agree with Magistrate Judge Clarke that the ALJ's findings there were supported by the record and free of legal error. The ALJ properly noted a one-year gap in seeking any treatment during a time Roberts complained of severe limitations due to debilitating pain. The ALJ also pointed to Roberts's generally normal examinations as well as her activities of daily living. In short, the ALJ used "ordinary techniques of credibility determination" in evaluating Roberts's credibility. *See Lingenfelter v. Astrue*, 504 F.3d 1028, 1040 (9th Cir.2007). Although Roberts argues another interpretation is reasonable, the ALJ's findings are supported by the record.

Roberts now argues the ALJ failed to discuss whether Roberts equaled a listing at step 3. In her pre-hearing brief, however, Roberts's attorney not only failed to argue Roberts equaled a listing but actually instructed the ALJ to proceed directly to step 5. Tr. 153. When represented by counsel, claimants "must raise all issues and evidence at their administrative hearings in order to preserve them on appeal." *Meanel v. Apfel*, 172 F.3d 1111, 1115 (9th Cir. 1999). I reject Roberts's attempt to assign error to something her counsel explicitly instructed the ALJ to not consider.

Magistrate Judge Clarke's Findings and Recommendation (ECF No. 18) is adopted. The Commissioner's decision is AFFIRMED.

IT IS SO ORDERED.

DATED this 23rd day of September, 2016.

/s/ Michael J. McShane
Michael McShane
United States District Judge